

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

New York Independent System Operator, Inc.

Docket No. ER03-749-000

ORDER CONDITIONALLY ACCEPTING CORRECTED TARIFF SHEETS

(Issued June 11, 2003)

1. In this order, the Commission conditionally accepts the corrections proposed by the New York Independent System Operator, Inc. (NYISO), on April 16, 2003, to its Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff). This order benefits customers by clarifying that NYISO has not changed its practices concerning allocation of certain costs, thus facilitating open and transparent markets.

Background

2. On September 25, 2002, the Commission accepted revisions to NYISO's OATT and Services Tariff that changed, for both tariffs, the cost allocation for NYISO's budgeted annual operating costs and Commission-assessed regulatory fees.¹ NYISO had proposed these changes in a May 31, 2002 submittal (May 31 Filing). Formerly, these costs had been allocated entirely on the basis of withdrawals of energy from and within the New York Control Area (NYCA). The revisions, which the Commission made effective as of June 1, 2002, reduced the percentage of these costs allocated to withdrawals to 85 percent, and allocated the remaining 15 percent on the basis of injections of energy within and into the NYCA. The September Order noted that NYISO's Management Committee was examining whether the 85/15 split in costs is an appropriate long-term allocation. It encouraged

¹New York Independent System Operator, 100 FERC ¶ 61,315 (2002) (September Order).

NYISO to complete this examination as soon as possible, and to revise the cost allocation, if necessary, in accordance with its findings.

3. On April 16, 2003, the NYISO submitted a filing to correct errors contained in the May 31 filing and accepted in the September Order. NYISO states that the May 31 filing contained inadvertent errors in the tariff sheets, regarding the allocation of responsibility for NYISO's costs among its customers, and that it now seeks to correct these errors.

4. NYISO states that the tariff revisions submitted in the May 31 filing correctly established that the responsibility for those costs listed in Section 3.A of Schedule 1 of NYISO's OATT that are included in NYISO's annual budget shall be allocated 15 percent to all injection billing units and 85 percent to all withdrawal billing units. However, NYISO explains, the May 31 filing inadvertently failed to include language making it clear that the allocation for the costs listed in Section 3.A of Schedule 1 of the OATT that are not included in NYISO's annual budget would continue to be charged entirely according to withdrawal billing units.

5. NYISO states that the tariff revisions submitted with the instant filing correct errors in the May 31 filing by adding provisions to the OATT and Services Tariff that specify that the recovery of costs not related to NYISO's annual budget and Commission-assessed regulatory fees, but listed in Section 3.A of Schedule 1 of the OATT, will continue to be recovered from customers on the basis of withdrawal billing units. NYISO also states that tariff revisions are necessary to correct the inadvertent removal of language in Section 4 of Rate Schedule 1 of the Services Tariff,² and that the revisions submitted with the instant filing include minor conforming edits.

6. NYISO requests waiver of the 60-day prior notice requirements, so that the corrected tariff provisions can be made effective June 1, 2002, the date the original tariff revisions became effective, pursuant to the September Order.

Interventions, Comments and Protest

7. Notice of NYISO's April 16, 2003 filing was published in the Federal Register, 68 Fed. Reg. 22,372 (2003), with comments, protests, and interventions due on or before May 7, 2003. New York Transmission Owners,³ Reliant Resources, Inc., and Multiple

²The restored tariff language makes clear that recovery under the Services Tariff is only for directly assignable costs that are not recoverable under the OATT.

³Central Hudson Gas & Electric Corporation, Consolidated Edison Company of

Intervenors⁴ filed motions to intervene. Multiple Intervenors also filed a protest, to which NYISO filed an answer, on May 22, 2003.

8. Multiple Intervenors raises two issues. Multiple Intervenors is concerned that the proposed revisions will not make sufficiently clear that the 85/15 split of costs allocations applies to Commission-assessed regulatory fees. It asks us to modify NYISO's proposed texts according to its suggested language. Referencing the Commission's encouragement, in the September Order, that NYISO complete its examination of the appropriateness of the 85/15 cost split as soon as possible, Multiple Intervenors asks us to require NYISO to take expeditiously all necessary measures to complete the examination. It also recommends specific areas for NYISO's examination.

9. Finally, Multiple Intervenors points out an error in the Services Tariff. It submits that the first sentence of Section 3 of Rate Schedule 1 of the Services Tariff, entitled "Computation of Rate," should be amended by deleting the word "two" and, in its place, inserting the word "three."

10. In its answer, NYISO states that it has discussed with Multiple Intervenors further clarification of the allocation of Commission-assessed regulatory fees. NYISO's answer submits substitute text, which, it states, Multiple Intervenors supports, to clarify that the 85/15 cost split includes Commission-assessed regulatory fees. NYISO also expresses its agreement with Multiple Intervenors' correction of the error in Rate Schedule 1 of the Services Tariff.

11. Concerning the cost allocation study required by the September Order, NYISO states that it will soon release a request for proposals for an outside consultant to perform the study. The outside consultant is to review and update NYISO's 2001 cost allocation materials, address the effect of information technology investments on the cost allocation, and identify which NYISO customers use or benefit from Rate Schedule 1 functions so as to determine which customers should be allocated these costs. NYISO asks the Commission to reject Multiple Intervenors' request for a further directive to perform the study.

³(...continued)

New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, and Niagara Mohawk Power Corporation, a National Grid Company.

⁴Multiple Intervenors describes itself as an unincorporated association of approximately 55 large commercial and industrial energy consumers with manufacturing and other facilities in New York State.

Discussion

Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c)(1) (2003), the timely unopposed motions to intervene make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits answers to protests unless otherwise permitted by the decisional authority. We find that good cause exists to allow NYISO's answer because of its usefulness in resolving this proceeding.

Tariff Modifications

13. We will accept NYISO's proposed tariff corrections, as modified in NYISO's answer. These proposed corrections make it unambiguous that the allocation of the costs listed in Section 3.A of Schedule 1 of the OATT that are not included in NYISO's annual budget will continue to be charged entirely according to withdrawal billing units and that Commission-assessed regulatory fees, like annual budgeted costs, are to be recovered from NYISO customers based on the 85/15 split.

14. We will deny NYISO's request for waiver of the Federal Power Act's 60-day prior notice requirement. The stated basis is that the April 16, 2003 filing serves only to correct inadvertent errors in the May 31, 2002 filing. In Central Hudson Gas & Electric Corporation, we stated that we would not waive the 60-day prior notice requirement absent extraordinary circumstances when an agreement for new service is filed on or after the day service has commenced.⁵ Inadvertent error, like administrative error, does not constitute the extraordinary circumstances that warrant waiver of the 60-day prior notice requirement.⁶ Moreover, the proposed corrections merely make NYISO's OATT and Services Tariff unambiguous; they do not change how NYISO recovers its costs. Accordingly, we will deny waiver and make NYISO's proposed tariff corrections effective after 60 days from the date of their filing, or June 16, 2003.

NYISO's Allocation Study

⁵Central Hudson Gas & Electric Corporation, 60 FERC ¶ 61,206, reh'g denied, 61 FERC ¶ 61,021 (1992) (Central Hudson).

⁶See Central Hudson, 60 FERC at 61,339. See also, Mississippi Power Company, 96 FERC ¶ 61,021 (2001).

15. With regard to Multiple Intervenors' request for expeditious completion of the cost allocation study discussed in the September Order, we continue to believe that NYISO should address that issue as soon as possible. The September Order: (1) noted that NYISO was currently examining whether the 85/15 split is an appropriate long-term allocation; (2) encouraged NYISO to complete its examination of that issue as soon as possible; and (3) stated the expectation that NYISO will revise its cost allocation, if necessary, in accordance with its findings.⁷ The September Order noted that NYISO had focused only on the fixed budget for operating costs, and encouraged NYISO to consider also the variable components of Schedule 1 charges and cost responsibilities for virtual bidding in conducting its study of whether the 85/15 cost allocation represents an appropriate long-term funding mechanism.⁸ NYISO's answer does not address these latter factors.

16. We will reinforce our direction that NYISO complete its examination of the appropriateness of the 85/15 split for the fixed budget for operating costs and the variable components of the Schedule 1 charges as soon as possible. So that we may ascertain the progress that NYISO has made we will direct NYISO to file, within 30 days of the date of this order, a status report on the proposed independent consultant study, and a timetable for the study's completion and for NYISO's submittal of proposed tariff revisions resulting from the study's findings.

17. Finally, we will require NYISO to file revised tariff sheets to modify the language in Section 2.B.2 of the OATT, and Section 3 of Rate Schedule 1 of the Services Tariff to conform these sections to the text proposed in NYISO's answer.

The Commission orders:

(A) NYISO's proposed tariff corrections are hereby accepted for filing, to become effective June 16, 2003, as discussed in the body of this order.

(B) NYISO is hereby directed to file, within 30 days of the date of this order, a status report on the progress made in its examination of the cost allocation issues, as discussed in the body of this order.

(C) NYISO is hereby directed to file revised tariff sheets, within 15 days of the date of this order, that revise the first sentence of Section 3 of Rate Schedule 1 of the Services Tariff, the first sentence of Section 3.B of Rate Schedule 1 of the Services Tariff,

⁷100 FERC ¶ 61,315 at P 13.

⁸Id. at P 14.

and the first sentence of Section 2.B.2 of Rate Schedule 1 of the OATT, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.